SEE CHOON & ORS.

v.

GOH POON MENG

HIGH COURT MALAYA, KUALA LUMPUR
WAN HAMZAH J
[CIVIL APPEAL NO. 15 OF 1981]
26 DECEMBER 1984

LANDLORD AND TENANT: *Tenancy tenure for 30 years - Notice to quit for subletting without consent of landlord - Failure to adhere to notice - Claim to recover possession of premises and double rent.*

This is an appeal from the decision of the President of the Sessions Court in Kuala Lumpur which dismissed the appellants' claim to recover possession of the premises known as No. 71 Batu Village, Jalan Ipoh, Kuala Lumpur and to claim double rent at RM468.80 per month from 1 April 1975 to the date of delivery of possession and damages for failure to adhere to a notice to quit and deliver possession of the premises on or before 31 March 1975.

The appellants based their claim on the grounds that the 1st respondent had without their consent and in breach of the tenancy agreement sublet a portion of the premises to the 2nd respondent.

The agreement is silent on the matter of subletting. However the clauses on alterations and transfer of right of tenancy refer to the 1st respondent as the chief tenant.

Held:

[1] It was within the contemplation of the parties when executing the agreement that the premises could be sublet.

[2] The tenure clause which reads as follows:

> Except being in arrears of rent, Chop Lam Chun, as Chief Tenant, shall retain his right of tenancy.

was interpreted to cover a maximum of thirty years from 1 July 1959 to 1 July 1989 as allowed by s. 47 of the Land Code 1928 (Cap. 138) since the tenancy was entered into in 1959, before the Land Code of 1965 came into force.

[3] The notice to quit was bad and ineffective.

[Appeal dismissed with costs to 1st respondent.]

Case referred to:
Siew Soon Wah & Others v. Yong Tong Hong [1973] 1 MLJ 133

Legislation referred to:
Land Code (cap. 138), s. 47

For the appellants/plaintiffs - Chew Biman; M/s. Chew Biman & Co.
For the respondents/defendants - K. Kirubakaran; M/s. Kam Woon Wah & Co.

JUDGMENT

Wan Hamzah J:

The first plaintiff in Kuala Lumpur Sessions Court Civil Action No. 1165/1975 is the previous owner of premises No. 71, Batu Village, Jalan Ipoh, Kuala Lumpur, and the second and the third plaintiffs are the present owners. The plaintiffs claim that the first defendant was the monthly tenant of the premises and that the first defendant without their consent and in breach of the tenancy agreement had sublet a portion of the premises to the second defendant. They gave a month written notice to the first defendant to quit and deliver vacant possession of the premises on or before 31 March 1975, but the first defendant did not comply, and they brought the action to recover possession and to claim double rent at RM468.80 per month from 1 April 1975 to the date of delivery of possession, and damages. At the trial of the action the Statement of Defence which had been amended was further amended with the leave of the Court, and after the last amendment there are three issues only arising out of the following contentions of the first defendant:

(a) Under the tenancy agreement subletting is not prohibited, and the consent of the plaintiffs is not required for subletting, and therefore there was no breach of the agreement on the part of the first defendant;

(b) under the tenancy agreement the period of tenancy is as long as the first defendant is not in arrears of rental, and therefore it is a term for as long a period as the law allows;

(c) the notice to quit given by the plaintiffs is bad in law;

(d) the premises is a rent controlled premises.

The President of the Sessions Court dismissed the plaintiffs' claim and they now appeal against the President's decision.

At the trial the tenancy agreement written in Chinese language was produced with its translation (Exhibits P2 and P2T). In the body of the agreement the tenant was named every time as Chop Lum Chun, and Ng Sze Ning signed at the end of the agreement as the tenant whereas in the Statement of Claim and in the Statement of Defence the first defendant's name is stated as Goh Poon Meng trading as Lam Chun. The agreement was dated 1 July 1959, and it was signed by the first plaintiff as the landlady. The other plaintiffs did not sign the agreement, probably because they were not yet owners of the premises at that time. According to the evidence of the first plaintiff the first defendant was a party to the agreement P2. The first defendant himself testified that he entered into the agreement P2. From these I infer that Ng Sze Ning who signed the agreement P2 as the tenant must be the same person as the first defendant but under a different name. From the evidence it appears that the second defendant was occupying the ground floor of the premises as a subtenant since about 1974, but had left in about 1976.

As to the first defendant's contention (a), in the agreement P2 there is no clause dealing with subletting. The agreement is silent on the matter of subletting. However, in Clause 3 dealing with alterations to be made to the premises, the tenant is stated as chief tenant. In Clause 4 dealing with transfer of right of tenancy the tenant is also stated as chief tenant. In Clause 5 Chop Lam Chun is stated to be chief tenant. For these reasons I am of the opinion that it was within the contemplation of the parties when executing the agreement, that the premises can be sublet.

As to the first defendant's contentions (b) and (c), the second limb of Clause 5 of the agreement is in the following terms:

> Except being in arrears of rent, Chop Lam Chun, as Chief Tenant, shall retain his right of tenancy.

To my understanding, by this the parties to the agreement meant that the tenancy is to continue as long as the tenant pays the rent. As the result, in law the agreement was one for the grant of as long a lease as the law allows, by analogy to the case of *Siew Soon Wah & Others v. Yong Tong Hong* [1973] 1 MLJ 133. In that case the appellants sought *inter alia* an order that the respondent should vacate the ground floor of No. 61 Jalan Pasar Bharu, Pudu, Kuala Lumpur. They contended that the respondent's tenancy had been determined by notice to quit. In the tenancy agreement in that case it was contemplated that "the tenancy shall be permanent". It was held by the Federal Court that the agreement was one for the grant of as long a lease as the law allowed, that is thirty years. The appellants appealed. The Privy Council dismissed the appeal. Per Viscount Dilhorne-

> What was meant by the words "The tenancy shall be permanent" was made clear in the paragraph which followed. The landlord bound himself not to increase the rent as he liked and not to eject the tenant by force etc. In their Lordships' opinion the agreement was not so vague and uncertain as to be void for uncertainty. The intention clearly was that the landlord should let the premises to the respondent for as long a period as it was within his power to do so and that he should not be able to eject the respondent so long as he paid the stipulated rent and that the respondent should be entitled to occupy the property so long as he wished and so long as he paid the rent. Section 47 of the Land Code (Chapter 138) of 1928 provided that no lease executed after the Code came into force should be for a longer period than thirty years and s. 221(3) of Act No. 56 of 1965 provides that the maximum period for which land can be let which does not consist wholly of alienated land - and the premises here did not consist of such land - is thirty years. So it was not in the landlord's power to grant the respondent a lease for more than thirty years.

In the present case the tenancy agreement was entered into in 1959 and therefore s. 47 of the Land Code (Chapter 138) applied to the agreement. Under that section no lease should be for a longer period than thirty years. Accordingly the agreement was one for the grant of thirty years' lease, i.e., as long as the law allowed. The lease commenced on 1 July 1959, and it will expire on 1 July 1989. Therefore the notice to quit was bad and ineffective.

As to the first defendant's contention (c), it appears from the submissions of the respective Counsel that this contention had been abandoned. In any case it would not be necessary to consider this issue in view of my decision that the plaintiffs fail on the other grounds.

In their written submissions both Counsel deal at length with the subject of alterations made to the premises by the first defendant, and the President of the Sessions Court also discussed the matter in his Grounds of Decision. It should be noted that in the Statement of Claim the plaintiffs never pleaded the alterations as a ground for their claim, and therefore the subject of alterations is irrelevant in the consideration of the plaintiffs' claim. The subject of alterations should be considered only if the plaintiffs succeeded on the ground of subletting and the Court made an order for delivery of possession of the premises, because the plaintiffs in praying for judgment had asked "that the first defendant do forthwith restore the alterations, if any, made by him on the said premises to its *status quo*".

The appeal is dismissed, with cost to the first respondent (first defendant).

Also found at [1985] 1 CLJ 386